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6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 In re

9 MARGARET M. ELLIS,

No. 03-12065

10 Debtor(s).
11 _____/

12 Memorandum on Motion for Payment of Administrative Expenses
13 _____

13 Creditors William and Rebecca Bertain are not typical creditors. They have had a long-running
14 property dispute with debtor Margaret Ellis and her former husband, who own property next to the
15 Bertains. The Bertains have decided that the best way for them to end up winning the dispute is to buy
16 the Ellis property, triggering considerable litigation in this case.

17 This case was originally filed as a Chapter 7. After the Bertains offered to purchase the Ellis
18 property from the trustee, Ellis converted her case to Chapter 13. No plan has as yet been confirmed.¹
19 The Bertains now seek to recover their attorneys' fees incurred while the case was in Chapter 7 by
20 having them awarded as expenses of administration pursuant to § 503(b)(1)(A). Specifically, the fees
21 are those incurred in objecting to claims of exemption, objecting to a motion for allowance of
22 administrative expenses brought by Robert Ellis, and "successful opposition to the debtor's Objection to
23 the Sale of the Debtor's Equity in and to the assets of her estate."

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26 ¹A motion to re-convert is pending. At this time, however, it appears that the conversion was a
legitimate and proper use of the right to convert to Chapter 13.

1 The court notes that the Bertains have cited the court's general equitable powers under § 105(a)
2 of the Bankruptcy Code as a basis for this application. To the extent § 105(a) is applicable at all, the
3 court denies the application on the basis that it is not equitable. Granting the motion would create an
4 unwarranted exception to the American rule that parties bear their own attorney's fees in the absence of
5 an agreement to the contrary. Further, it appears that a principal purpose of this motion is to create an
6 administrative load so heavy as to make confirmation of a plan impossible so that the case must be
7 converted back to Chapter 7 and the sale to them consummated. Further, the motion ignores the fact that
8 the Bertains' legal positions were overruled as often as they were sustained. If this motion is to be
9 granted, it must be justified within the four corners of § 503; there is no equity to an award on any other
10 basis.

11 The court begins by noting that in some jurisdictions, "substantial benefit" under § 503 is
12 applied in a manner that excludes reimbursement in connection with activities, as those of the Bertains in
13 this case, which are designed primarily to serve their own interests. See, e.g., *Lebron v. Mechem Fin.,*
14 *Inc.*, 27 F.3d 937, 944 (3rd Cir. 1994); *In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988). The rule is not
15 settled in this circuit. *In re Cellular 101, Inc.*, 377 F.3d 1092, 1097 (9th Cir. 2004). However, the rule
16 is certainly appropriate in this case because the Bertains do not care about the estate in general, or even
17 maximizing their dividend; they just want to acquire the Ellis property.

18 The Bertains concede that some of their attorney's efforts did not benefit the estate in general,
19 and propose to reduce the total fees of \$7,020.00 by \$1,500.00, for a net claim of \$5,520.00. There is
20 no way that the court can make an award based on such an arbitrary reduction. Administrative expense
21 claims can only be awarded based on exact and fully justified expenses.

22 Moreover, expenses cannot be recovered for activity which was duplicative of the efforts of the
23 trustee, especially where attorneys' fees are concerned. See *In re Weibel, Inc.*, 176 B.R. 209, 212n3
24 (9th Cir.BAP 1994); 4 **Collier on Bankruptcy** (15th Ed. Rev), ¶ 503.10[5], p. 503-65. The third service
25 for which reimbursement is made, "successful opposition to the debtor's Objection to the Sale of the
26 Debtor's Equity in and to the assets of her estate," translates into supporting the trustee's proposed sale.

1 This was the trustee's responsibility. In addition, the trustee filed opposition to the administrative
2 expense claim of Robert Ellis so the Bertains' efforts were duplicative of these services as well.

3 Applying the foregoing principles, the court finds only the successful objection to the debtor's
4 homestead exemption might be worthy of recompense. It appears that the Bertains were the only parties
5 who objected, and disallowance of the exemption was of direct, if limited, benefit to the estate.²
6 However, the court still cannot award anything because Bertain's counsel engaged in "lumping" of
7 services with only one total of time spent per day, instead of itemizing each service, so that the court
8 cannot determine how much time was reasonably spent on the homestead objection as opposed to other
9 matters. See *In re Dutta*, 175 B.R. 41, 46 (9th Cir.BAP 1994). That practice is forbidden by this
10 court's fee guidelines, and the Bertains have presented no cause for deviating from them.

11 For the foregoing reasons, the motion will be denied. Counsel for the debtor shall submit an
12 appropriate form of order.

13 Dated: October 18, 2004

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Alan Jaroslovsky
U.S. Bankruptcy Judge

²A lesser exemption was allowed over the unsuccessful objection of the Bertains.